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Requiring County Jail Inmates to Pay for Some Health Care Services

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ABSTRACT

Most county inmate populations are growing and the cost of medical care services are growing faster comparative to inmate populations. By introducing an inmate medical cost-sharing program, abuse of medical programs by inmates can be decreased and inmate related health care costs can be remarkably reduced. Research on the inmate medical health care cost-sharing program or co-pay at county jail level has taken three primary forms, which are explained later.

Some counties had contracted with outsourced health care service providers to manage inmate medical health care at a contracted price per inmate per day. Harris County, the largest populated county in Texas, has an inmate cost for medical services program in place. Descriptive studies of inmate health care at county jail level are virtually none existing. Since the early 1990's some surveyed Texas counties have implemented an inmate co-pay system or have outsourced there inmate health care with a health care provider. Texas counties with inmate health care programs or inmate co-pay programs or a combination of both have experienced a decrease in health care spending.

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INTRODUCTION

With only half the year remaining many states and counties still have budget shortfalls. The State of Texas is reported to be facing a budget deficit of 10 billion dollars and forty-eight (48) Texas Counties issued debt in fiscal year 2001. Texas taxpayers are facing an all time high tax rate.

This paper will present that the cost of health care services for Texas county jail population (inmates) is a growing source of concern given the local government's revenue shortfalls. Medical health care services are on the increase and local government revenues are decreasing. One of the largest budget allocations in managing/housing inmates is health care services. County law enforcement agencies are the single largest user of county budgets and counties are looking for a way to reduce rising budget requirements.

The purpose of the research is to assess the cost impact of county jail population health care services, and the feasibility of establishing an inmate medical cost sharing or co-pay program at the county jail level. Most county inmate populations are growing and the cost of medical care services are growing faster comparative to inmate populations. In order to assess the impact of inmate health care cost, a sample of Texas counties will be surveyed. The survey will collect data on the cost of inmate health care services relative to the detention divisions' budgets. Interviews with jail/detention administrators and medical supervisor will be conducted and provide resource information relating to inmate health care services and cost.

Additionally, established research data will be obtained through published information sources. The American Civil Liberties Union (ACLU) registered legal resistance to inmate medical cost sharing programs (co-pay). The ACLU's perspective is that inmate co-pay programs are

unconstitutional.

The intended outcome of this research is to show that in every county, housing and managing jail inmates can benefit in instituting a medical cost-sharing program. By instituting an inmate medical cost-sharing program, abuse of medical programs by inmates can be decreased and inmate related medical costs can be remarkably reduced. The benefit of this research to law enforcement will be to present a way to off-set the budgeting impact of inmate medical costs. More money will be available for use in other areas needed.

REVIEW OF LITERATURE

This literature on the feasibility of establishing an inmate medical health care cost sharing or co-pay program at county jail level includes issues such as; How to establish, organize, and manage a program.

Research on the inmate medical health care cost-sharing program or co-pay at county jail level has taken three primary forms:

- Texas counties experiencing decreasing financial resources
- The rising cost of medical health care and prescription drugs in America
- Dealing with the Eight Amendment to the United States Constitution, cruel and unusual punishment.

Texas Deficient

A substantial amount of local government research has been produced which looked at the status of the Texas financial deficient, but little research information is available directing research efforts towards individual county deficient in Texas and how it impacts the law enforcement community. These limit studies or reports demonstrate the short falls between

county budgets and inmate medical care.

The findings, consistent across studies of county budgets, show that the county level law enforcement agencies consume larger parts of county budgets. For example, Fort Bend County 78% of the 22% budgeted for Public Safety, and

medical care is a substantial part of the consumption in the detention bureaus (jails). The Texas Bond Review Board 2002 Annual Report addresses the counties financing debt through bonds.

According to Kumar (2003), Fort Bend County Sheriff's Office, and tax payers, paid medical bills for James Henry Aduddle for a costly heart bypass surgery. Aduddle is a bank robbery suspect jailed at the Fort Bend County Sheriff's office Jail. Aduddle's medical bills are close to $170,000 (Kumar, 2003). The Fort Bend County Sheriff's Office inmate medical budget was wiped out for the 2002-2003 budget year.

Medical health care and prescription drugs

Another aspect of study surrounding the implementation of an inmate health care cost sharing or co-pay program is the rising cost associate with medical health care. This is represented by the Hawaii Medical Service Association study on its website. The article is directed towards "Why is Medical Costs Increasing in Hawaii." The unnamed author discusses the reasons for rising health care cost including new medical technology, prescription drugs, mandates and government regulations, and individual lifestyle and many more.

Working from a similar approach, Wilkinson, (2002) addresses the issue of rising health care cost and inmate abuse of the system. Wilkinson, (2002) points

to how York, NE Senator Ray Aguilar sponsored a bill to establish an inmate co-payments system, LB 460. "Under this measure and LB 460 (which would require state inmates to

contribute a $2.50 co-payment), indigent inmates would, however, not be required to make the co-payment."

Dealing with the Eight Amendment to the United States Constitution, cruel and unusual punishment.

According to the Texas Code of Criminal Procedures (2002), Art. 16.21. Duty of sheriff as to prisoners, "Every sheriff shall keep safely a person committed to his custody. He shall use no cruel or unusual means to secure this end." "The county's obligation to provide post-arrest medical care for inmates arises from the due process clause of the United States Constitution," (The Associated Press State & Local Wire, 2003, p. 1). Additionally, Art 104.002 (a), (b), and (c) requires the county to pay for inmate medical care. Art. 104.002 (d) gives the county the right to recover medical expense charged while an inmate was in their custody.

The American Civil Liberties Unions (ACLU) demonstrates an opposition to charging inmates co-payments for their post-arrest medical health needs. "The ACLU affirms that the Eight and Fourteenth Amendments forbid the state from imposing cruel and unusual punishment upon incarcerated or someone who has been released (The ACLU of Texas position).

As Gustafson (2003) reported, "Reyes-Camarena was featured in a recent Statesman Journal series that delved into ethical, legal and financial questions arising from costly inmate health care" (p. 1). Reyes-Camarena is a 47 year old Oregon state death row inmate who requested a kidney transplant and the state citing medical and financial reasons denied the request. The transplant would cost the state of Oregon $80,000 – $120,000 for the initial surgery plus specialized medication for life. The medical procedure would cost the state of Oregon a heap of money and has sparked legal controversy.

"Several years ago, a focus group sponsored by the California Medical Association's

Corrections and Detention Committee (CMA/CDC) was charged with developing a position paper on issues of inmate co-payment for medical services (Lanham & Clark, 1997, pp. 1-3). The CMA/CDC found that an inmate co-payment program could be implemented as long as it was equitable and inmates were not denied medical health care because they could not pay for it. The CMA/CDC published guidelines for establishing an inmate co-payment program.

The Texas Code of Criminal Procedures (CCP), Art. 104.002 (a), (b), and (c) further delineates the county's responsibility as to inmate health care for post arrest. The Texas CCP, Art 104.002 paragraph (d) as amended by Acts 1991, 72nd Leg., ch. 14 284(19), eff. Sept. 1, 1991 states "A person who is or was a prisoner in county jail and received medical, dental, or health related services shall be required to pay for such services when they are rendered. If such prisoner cannot pay for such services because of indigence, as defined in Chapter 61, Health and Safety Code, said county shall assist the prisoner in applying for reimbursement through that chapter or the hospital district of which he is a resident. A prisoner who does not meet the eligibility for assistance payments shall remain obligated to reimburse the county for any medical, dental, or health services provided and that county shall have authority to recover the amount expended in a civil action." This statue gives counties the ability to establish inmate co-pay programs under set guidelines and recover some monies spent.

On October 13, 2000, then President Bill Clinton signed Federal Prisoner Co-payment Legislation sponsored by South Dakota U.S. Senator Tim Johnson. As B. Martin and F. Scanlan (2000) reported, "The goal of the Prisoner Health Care Copayment Act is not about generating revenue for the federal, state and local prison system. Instead, current prisoner health care copayment programs in 38 states, including South Dakota, illustrate the success in reducing the number of frivolous health visits and strain on valuable health care resources," (p. 1). The

federal legislation signed by former President Bill Clinton was one of the rare times that the states led the way and the federal government followed. Title 18, Part III, Chapter 303, Section 4048, 5/10/2002, incorporates the new legislation that was codified – "Fees for health care services for prisoners."

METHODOLOGY

The methodology adopted was to select a broad representative group of county jail facilities in the state of Texas, that were geographically different. Then, telephone calls were made explaining the aims and objectives of the research and inviting them to participate in the research study. The response rate to the research was very high with all county facilities contacted responding positively and providing requested information or available information.

The representative group of county jail facilities were selected from the Texas Commission on Jail standards Jail Population Report, 2003. The representative group of county jail facilities included Bexar, Collin, Dallas, El Paso, Ft. Bend, Harris, Jefferson, Galveston, Nueces, Smith, and Tarrant counties. All had reported jail inmate populations of 618 or greater in May 2003 and were not privately operated. The research focused on the budget for inmate medical health care prior to initiating a cost for service program and the decreased cost of inmate medical service after a program had been in place.

It was discovered, during the research, that not all county jail facilities had an inmate cost for service program in place. Some counties had contracted with health care service providers to take care of inmate medical health care at a contracted price per inmate per day. Other counties commissioner courts budgeted for inmate health care services and turned it over to their local hospital districts. Yet others had a combination of both. The largest facility in the research

study, Harris County, has an inmate cost for medical services program in place. Harris County has not contracted inmate health care services out to their local hospital district, but has contracted with the University of Texas Medical Branch for inmate health care, the same as the Texas prison system and charges inmates a co-pay for some specified medical services.

Not all the figures collected are comparable with one another. To complicate matters further, some hospital districts and health care service providers do not keep statistics on dollar cost per inmate health care service provided per day.

Descriptive studies of inmate health care at county jail level are virtually none existing.

FINDINGS

The State of Texas is experiencing an overhaul of the budget that will require a reduction of $1.4 billon over a two year period from the state health and human services programs, (Houston Chronicle, 2003, Sec A, p.1). The Texas prison system is contributing a 7% reduction in their budget and reducing funding for prison health care and associated medical programs, (Houston Chronicle, 2003, Sec A, p.1). Likewise, in April 2003 Fort Bend County, County Judge Robert E. Hebert called for a 4% reduction in the county's budget, (Star, April 2003).

Since the early 1990s some surveyed Texas counties have implemented an inmate co-pay system or have contracted there inmate health care with a health care provider. In all cases, surveyed counties expressed their overwhelming goal is to reduce frivolous requests for jail health care service, thereby enhancing service to medically needy patients; encourage inmates to make appropriate choices regarding medical services; reduce the frequency of transporting inmate out of a secured facility and increasing the opportunity for escape; and generate revenue.

Providing inmate health care has become a challenge with national health care and prescription drugs rising at 10% in 2001 and 9.6% per year in 2002 nation wide (Raimer,

Patterson, & Boultinghouse, 2002). Additionally, "federal courts have ruled that inmates have a constitutional right to a level of medical care similar to what is available to other citizens (Raimer et al., 2002). In August 1993, the Texas 73rd legislature established the Correctional Managed Health care Committee and developed an inmate health care program for Texas prisons. The program was implemented in September 1994. As Clark (1997) reported, "inmate-fee-for-medical-service programs must contain several key consensus criteria to ensure that no barriers exist which will violate the inmate's constitutional right to access medical care. The guidelines developed by the California Medical Association's Corrections and Detention Committee (CMA/CDC) for establishment of inmate co-payment programs for medical services are self-explanatory. They emphasize the importance of ensuring that policies are well-reasoned and clearly articulated to the inmate population. Guidelines are as follows:

- The program's policies and procedures must be developed jointly by custody and medical personnel.
- The fee schedule must be widely posted and/or published for inmates.*
- A list of exempt services must be published and posted.*
- A list of billable services must be published and posted.*
- A policy should be in place to waive fees for the indigent inmate.*
- A grievance/appeal process for the inmate who desires to challenge a billed service visit should be in place.*
- The co-payment must be cashless.*
- A structured revenue management system should be in place.*
- A policy should be in place to address negative balances.*
- A policy should be in place to monitor and control over-the-counter medications.

- A system should be in place to annually monitor morbidity and mortality.
- A policy should be in place to monitor the workload on the clinical service (i.e. decreases on increases in the number of clinic visits, the number of referrals to the emergency room before and after starting).

The amount of co-payment should not exceed the state rate for the Medi-Cal/Medicaid co-payment. *Denotes an essential criteria guideline.

The program should be evaluated to ensure that it is cost-effective and efficient. Billable services would include self-initiated clinic visits, over-the-counter medications (OTC's), noncrisis mental health services and administrative fees for prescription medication (not to exceed $5 per visit). Services to be exempt would include intake medical screening, National Commission on Correctional Health Care (NCCHC)-required 14-day health appraisal, public health evaluations, initial mental health examinations, pregnancy-related services, services funded by special grants or contracts, laboratory and diagnostic services, life threatening emergencies and follow-up for chronic diseases. A list of these exempt services should be posted" (pp. 2-3).

After obtaining information from surveyed counties, some Texas counties had implemented its own inmate health care program two to three years prior to the Texas prison system. Texas counties with inmate health care programs or inmate co-pay programs or a combination of both have experienced a decrease in health care spending and have obtained earlier stated goals.

The information obtained in this study will be charted to reflect a dollar cost per inmate per day under managed inmate health care service and inmate co-pay programs as opposed to a no co-pay program and no contracted managed inmate health care service provider.

Additionally, as an added benefit to counties contracted with health care providers is that the medical staff in the detention facility is that of the contracted medical provider. This means the medical staff's salaries and benefits are provided by the contracted medical provider and not by the counties. According to the surveyed medical providers for specified county jails and surveyed counties. Contracts for contracted medical care providers stipulates funding allocations, performance measures, and provider responsibilities and the providers are capitation for a specified rate as reflected in the attached chart. The quality of inmate health care, at El Paso County Detention Facility, is delivered to jail inmate at below 2002 national average of $7.50 per inmate per day (D. Moore, personal communication, July 22, 2003).

DISCUSSION/CONCLUSIONS

The cost of county jail inmate health services is a continuing source of concern with increasing inmate population, poor pre-arrest health of inmates, and increase cost of inmate health care services. Statistics indicate that the cost of inmate health care services is rising at a rapid rate. The cost of inmate health care is also related to the growth of county jail inmate population which has soared. As Hanson and Rendon (2003) reported, Fort Bend County is the second fastest growing county in the State of Texas from July 1, 2001 to July 1, 2002 by 6% (Hanson, 2003). Fort Bend County spent thousands of dollars on inmate health care above what the cost may have been with a managed care program or co-pay program. This cost is financed through the county general revenue, without municipal aid or contribution.

In 1993, the Texas 73rd Legislature passed a law affecting inmate medical care services co-payments. Most surveyed counties, several hospital districts and outsourced inmate medical care providers incorporating inmate co-payments provide medical services for a fixed sum per

inmate per day. The managed and co-payment programs provide quality inmate care at the lowest competitive cost.

According to Vogt (2002), co-pay programs and outsourced inmate medical health care services are becoming increasingly common as shown by this research. The programs charge the inmate for a service that was previously free.

Increasingly inmates are targeting these programs for court challenges. To date, inmate efforts have not convinced the judiciary that they are entitled to unrestricted free medical care (Vogt, 2002, pp. 1 – 2). Surveyed Smith County has not had an inmate law suite directed towards its inmate medical health care program in more than twenty (20) years, and including the time since inmate co-payment was implemented. (Cpt. C. Adams, personal communication, July 24, 2003).

The results of the research show, first, how costly inmate health care is without managed care, a co-payment program or combination of both. Secondly, the research show that an inmate managed care program as apposed to no inmate managed care program can result in saving as much as 80% per inmate per day. The benefit of this research to law enforcement is a way to off-set the budgeting impact of inmate medical cost. More money will be available for use in other areas needed.

REFERENCES

Boultinghouse, O. & Patterson, P. (2002). Correctional Health Care In the Texas Department of Criminal Justice, UTMB Correctional Managed Care. Retrieved July 23, 2003, from http://www.utmb.edu/cmc/govwest.htm

Clark, J. (1997). Guidelines for implementing inmate medical fees. Corrections Today, 59 (6), 106 – 108.

Fort Bend County Budget. (2003). Budget Summary abstract [Electronic version]. 2003-2004 Fiscal budget year, p. 50

Gustafson, Alan (2003, July 20). Death-row inmate denied transplant [Electronic Version]. Statesman Journal, pp. 1-3.

Hanson E. and R. Rendon, (2003, April 17). Area counties boosting state population. Houston Chronicle, Section: Local and State, p. 1.

Texas Bond Review Board 2002 Annual Report. (2003, January). Texas Debt in Perspective, pp 1 – 6, [Electronic version], Retrieved June 4, 2003, from http://www.brb.state.tx.us/index.html.

The American Civil Liberties Union, (1998). The ACLU of Texas Position: Inmate Per Diem. Retrieved June 4, 2003, from http://www.aclutx.org/pubed/positionpapers/inmateperdiem.htm

The Texas Statues Revised. (2002, May). Texas Government Code (2002 ed.) . Texas: Government Printing of Texas, Inc.

Report says most states have money woes for 3rd year. (2003, April 25). The Houston Chronicle, p. 12A.

The Associated Press State & Local Wire. (2003, April 16). County, clinic settle dispute over

inmate medical bills. Pp 1 – 2. Retrieved June 12, 2003, from http://weblexislexis.com/universe/document?_m=0d287d67cab841calcec48ac9260aada

The Associated Press State & Local Wire. (2002, September 16). Med school ready to take over county jail health care. pp 1 – 2. Retrieved June 16, 2003, from file://a:/LexisNexis(TM) Academic – Document3.htm

The Associated Press. (2000, October 17). Inmate to Pay for Health Care. Pp 1 – 2. Retrieved June 13, 2003, from http://archive.aclu.org/news/2000/w101700c.html

The Hawaii Medical Service Association. (2003, June 30). Why are Medical Costs Increasing in Hawaii. Retrieved July 19, 2003, from http://www.hmsa.com/about/issues/health_care_cost/increase.asp

National Conference of State Legislatures. (2003, June 11). Health Finance Issues. Retrieved July 29, 2003, from http//www.ncst.org/programs/health/finance.htm

R. G. Ratcliff & P. R. Hughes (2003 February 08). 78th Texas Legislature; Prisons, health, schools urged to slash budgets. The Houston Chronicle, p. A1.

Vogt, R. P., (2002). Inmate Co-Pay Finds Support in the Courts [Electronic version]. Journal of Correctional Health Care, pp. 1 – 2.